

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6062L

v.

CARLOS TORRES,

Defendant.

Defendant, Carlos Torres (“Torres”), has been indicted with several others and charged with narcotics and weapons offenses. Specifically, Torres is charged with conspiracy to distribute 5 kilograms or more of cocaine and also charged with use of a firearm in connection with a drug trafficking crime, 18 U.S.C. § 924(c). If convicted, as charged, Torres faces a mandatory minimum sentence of 15 years imprisonment with a potential maximum sentence of life imprisonment. On the Government’s motion, a detention hearing was held and United States Magistrate Judge Marian W. Payson ruled on May 3, 2005 that Torres should be detained on the grounds that he was a danger to the community. The Government had originally moved to detain based both on risk of flight and danger to the community. Torres now appeals Magistrate Judge Payson’s decision to this Court.

I note at the outset, that both charges, drug trafficking and possession of a weapon in furtherance of that activity, create a statutory presumption for detention. 18 U.S.C. § 3142(e). Although Magistrate Judge Payson did not base her decision on risk of flight, based on the substantial quantity of drugs found, the strength of the Government’s case and the fact that Torres

is facing a minimum 15-year sentence, there would be a basis to detain based on risk of flight, in spite of Torres' lack of prior record and significant ties to the community.

Magistrate Judge Payson did focus on danger to the community and I believe the evidence supports that. I do not believe that the defendant has rebutted the presumption that no condition will reasonably assure the safety of the community. The evidence developed at the detention hearing painted a picture of a significant drug dealer. The confidential informant provided information that was corroborated by the supervising officers. A substantial quantity of cocaine was found, over 12 kilograms, and upon a search of the residence, a substantial sum of money, as well as a shotgun and bullet proof vest were also discovered. I am not persuaded by the explanation advanced by Torres' counsel for his possession of those items. Magistrate Judge Payson was not impressed with the explanation as she indicated in rendering her oral decision. I believe, when considered together, all of the evidence establishes the trademarks of a significant drug dealer, and I think under those circumstances, in spite of Torres' ties to the community and lack of prior record, detention is warranted because such illegal activity constitutes a danger to the community.

CONCLUSION

Defendant's appeal from the detention order of United States Magistrate Judge Marian W. Payson, issued on May 3, 2005, is denied, and I affirm the detention order.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
August 17, 2005.

